IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.497 OF 2006
WITH
CIVIL APPLICATION NO.625 OF 2006

Mr.Vineet Agarwal. ..Appellant.

V/s.

The City & Industrial Development Corporation Ltd. ..Respondent.

WITH

APPEAL FROM ORDER NO.498 OF 2006
WITH
CIVIL APPLICATION NO.626 OF 2006

Mr.Premchand R. Bafna. ..Appellant.

V/s.

The City & Industrial Development Corporation Ltd. ..Respondent.

WITH

APPEAL FROM ORDER NO.519 OF 2006
WITH
CIVIL APPLICATION NO.657 OF 2006

Embedded Resources Pvt.Ltd. ..Appellant.

V/s.

The City & Industrial Development Corporation Ltd. ..Respondent.

Mr.V.A.Thorat for R.A.Thorat & P.J.Thorat for appellant.

Mr.R.M.Sawant with A.R.Patil, AGP for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 20, 2006.

P.C. :

1. Heard Mr. Thorat for the appellant.

2. Similar issue had arisen for my consideration in Appeal from Order No.417 of 2006, which was disposed of on July 11, 2006. The view taken by the Trial Court in the impugned Judgment that the State Government was necessary party to the proceeding in the fact situation of the present case has been upheld by me. The same view has been taken in the impugned Judgment. In such situation, following my earlier decision in Appeal From Order No.417 of 2006 decided on July 11, 2006, these appeals will have to be disposed of.

3. However, Mr.Thorat for the appellant submits that the opinion recorded by the Trial Court that the State Government is a necessary party in the present proceedings is incorrect. To buttress the submission, counsel for the appellant submits that the law is well established that the State Government cannot interfere with the autonomy or functioning of the authorities such as CIDCO. Learned counsel has relied on scheme of Sections 154 and 118 to advance

this contention. According to him, interference of the State Government in the matter of allotment and cancellation of allotment is very limited. Even if the section 118 of the Act was to be accepted as it is, the same had no application to the fact situation of the present case. This is so because the grant of lease in favour of the appellant was not for a term of more than 99 years in which situation alone the matter has to go back to the State Government. The argument canvassed by Mr Thorat as indicated above does not commend to me. What is relevant to be noted in the present case is that the case of defendant is that the action of cancellation was taken on the basis of direction given by the State Government, which was founded on the report of Dr.D.K.Shankaran Committee. This has been noted by the Trial Court in the impugned Judgment. The basis on which State Government issued such direction can be explained only if the State Government was party to the proceeding. In my opinion, no fault can be found with the opinion expressed by the Court below that having regard to the fact situation of the present case, State Government is a necessary party. Even if the matter was to be considered on the basis of averments in the plaint, it is obvious that in paragraph-11 of the plaint the plaintiff has clearly

stated that the State Government had acquired the land in question. Further, the understanding between the State Government and the defendants are not on record. In paragraph-21 of the plaint, reference is made to the fact that plaintiff was not furnished with the copy of the report of Shankaran Committee. Counsel for the appellant submits that reference to Shankaran Committee report has been made because, that is mentioned in the show cause notice issued to the plaintiff. The fact remains that the case which is made out before the Lower Court by the defendant is that the State Government on the basis of report of D.K.Shankaran Committee issued direction to the CIDCO to take action, which direction was the basis to issue show cause notice to the appellant/plaintiff. In other words, for the plaintiff to succeed, one of the issue that will be raised in the proceedings at the instance of the plaintiff, which was canvassed even before this Court, as noted earlier that the State Government had no authority to issue directions of the kind have been issued to the respondent-CIDCO. The question whether the State Government had such authority or not, is a matter, which cannot be decided in absence of State Government, being party to the proceedings. Moreover, the basis on which State Government was

pursuaded to issue direction to CIDCO is a matter, which can be and will have to be explained by the State Government. Taking this aspect into account, although not considered by the Lower Court, I would uphold the opinion expressed by the Lower Court that the State Government will be necessary party in the fact situation of the present case. On this finding, I have no hesitation in disposing of the appeal on the same terms, on which Appeal from Order No.417 of 2006 has been disposed of on July 11, 2006. Accordingly, it is observed that it is only after the appellant takes steps to amend the plaint and add State Government as defendant and also asks for the further relief as may be advised, the question of entertaining interim relief prayed by the appellant can be considered on merits.

4. Accordingly, these appeals are disposed of with liberty to the appellant to move the trial Court for seeking necessary amendment, as may be advised. To facilitate the appellant to take recourse to such proceeding, it is directed that the defendants will not precipitate the matter for a period of four weeks from today. After the amendments are allowed by the Trial Court and carried out, it will be open to the appellant to move for appropriate temporary relief,

consistent with the relief against the State Government in the pending suit. Till such application is decided it will be open to the trial Court to protect possession of the appellant with regard to the suit property.

5. The appeals and cognate civil applications disposed of on the above terms.